

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Tyler Walls	Team: Squad #04	CCRB Case #: 202103424	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 03/18/2021 5:00 PM	Location of Incident: § 87(2)(b)	18 Mo. SOL 9/18/2022	Precinct: 20		
Date/Time CV Reported Sun, 06/06/2021 2:26 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 06/07/2021 10:48 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POF Jennifer Tierney	07903	949730	020 PCT
2. POM Michael McGuire	25906	955166	020 PCT
3. LT David Sansone	00000	939414	020 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Carlos Gomez	23530	968449	020 PCT
2. POM Richard Conde	24074	945605	020 PCT
3. POM Andrew Testani	22305	968837	020 PCT
4. POM Stephen Sheridan	24706	967336	032 PCT
5. POM Alberto Natal	29342	933082	020 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Michael McGuire	Force: Police Officer Michael McGuire used physical force against § 87(2)(b)	§ 87(2)(g), § 87(4-b)
B . POM Michael McGuire	Force: Police Officer Michael McGuire used physical force against § 87(2)(b)	§ 87(2)(g), § 87(4-b)
C . POM Michael McGuire	Force: Police Officer Michael McGuire used physical force against § 87(2)(b)	§ 87(2)(g), § 87(4-b)
D . POF Jennifer Tierney	Abuse: Police Officer Jennifer Tierney forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(g), § 87(4-b)
E . POM Michael McGuire	Abuse: Police Officer Michael McGuire forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(g), § 87(4-b)
F . LT David Sansone	Abuse: Lieutenant David Sansone forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(g), § 87(4-b)
G . LT David Sansone	Abuse: Lieutenant David Sansone searched § 87(2)(b) in Manhattan.	§ 87(2)(g), § 87(4-b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(g), § 87(4-b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(g), § 87(4-b)

### Case Summary

On July 6, 2021, § 87(2)(b) filed the following complaint with the IAB over the phone, under log number § 87(2)(b). On July 7, 2021, the following complaint was referred to the CCRB.

On March 18, 2021, at approximately 5:00 p.m., § 87(2)(b) called 9-1-1 to report a past rape. PO Michael McGuire and PO Jennifer Tierney, both of the 20<sup>th</sup> Precinct, responded to § 87(2)(b) residence at § 87(2)(b) in Manhattan. After hearing § 87(2)(b) story, the officers deemed him to be an emotionally disturbed person (EDP) and called EMS to take him to the hospital. Lt. David Sansone and PO Carlos Gomez, both of 20<sup>th</sup> Precinct, responded. PO McGuire pulled § 87(2)(b) out of his seat (**Allegation A: Force; § 87(2)(g)**). PO McGuire then allegedly pushed § 87(2)(b) into PO Tierney, causing both to hit a glass window along with a pedestal and a vase (**Allegation B: Force; § 87(2)(g)**). Once § 87(2)(b) was on the ground, PO McGuire punched § 87(2)(b) in the face (**Allegation C: § 87(2)(g)**). The officers placed § 87(2)(b) onto the ambulance where they removed him to hospital (**Allegations D – F: Abuse of Authority; § 87(2)(g)**). Lt. Sansone instructed the remaining officers on scene to search § 87(2)(b) apartment for any other persons or dangers left inside (**Allegation G: Abuse of Authority; § 87(2)(g)**).

§ 87(2)(g), § 87(4-b)

The investigation obtained body-worn camera (BWC) footage of the incident. No video surveillance footage was obtained.

### Findings and Recommendations

**Allegation (A) Force: Police Officer Michael McGuire used physical force against § 87(2)(b)**

**Allegation (B) Force: Police Officer Michael McGuire used physical force against § 87(2)(b)**

**Allegation (C) Force: Police Officer Jennifer Tierney used physical force against § 87(2)(b)**

On March 18, 2021, at approximately 5:00 p.m., § 87(2)(b) called 9-1-1 because he wanted to report a rape that happened to him in the past. § 87(2)(b) alleged that staff members from his psychiatric facility kidnapped him and brought him to a house in Westchester County where they raped him. PO Tierney and PO McGuire responded and § 87(2)(b) allowed them into his apartment. § 87(2)(b) sat in a chair. Between this chair and another nearby chair stood a pedestal with a glass vase on top. § 87(2)(b) informed the officers about what had transpired. A minute into the conversation, PO McGuire excused himself and said he needed to speak with his supervisor. PO McGuire kept going inside and outside of the apartment. Eventually PO McGuire came back and stayed inside with PO Tierney. At some point, an EMT came inside of § 87(2)(b) apartment. § 87(2)(b) told the EMT to leave. § 87(2)(b) heard more officers outside of his apartment. Without warning, PO McGuire, using both hands, grabbed § 87(2)(b) right arm and picked him up out of the chair. PO McGuire then used both hands to push him by his torso into PO Tierney. PO Tierney in turn fell into the glass window and hit the pedestal and the vase. § 87(2)(b) fell, and the vase fell on top of his head and broke apart. § 87(2)(b) sustained two long scraps on the top of his head, a bump on his left eye, and a laceration on his forehead, causing him to bleed. PO McGuire punched § 87(2)(b) on his chest and shoulders. § 87(2)(b) did not know how many times PO McGuire punched him. § 87(2)(b) denied resisting the officers. PO

McGuire placed handcuffs on § 87(2)(b) left wrist. PO Gomez came into the room and attempted to assist PO McGuire. PO McGuire pinned down § 87(2)(b) right arm while PO Gomez placed him in handcuffs. PO McGuire never provided any commands or warning prior to him using any force (BR 01).

PO McGuire testified that he received a 9-1-1 call from the incident location regarding a past rape that had transpired. PO McGuire and PO Tierney responded to the address where they were allowed inside by § 87(2)(b). Inside of the room where they talked stood a pillar with a Roman column with a glass orb on top. The pillar and the orb stood directly behind the officers, an arm's length behind PO Tierney and a couple more lengths away from PO McGuire. PO Tierney stood to PO McGuire's right as they spoke. § 87(2)(b) explained that in the past, when he attempted to receive medical attention from doctors, the doctors kidnapped him and raped him instead. § 87(2)(b) knew that he had been raped because he stuck his finger up his rectum and pulled out bags of wine and feces. § 87(2)(b) stated that the sensation felt like razor blades in his rectum. § 87(2)(b) stored this evidence with a friend. When asked by the officers for the name of the friend, § 87(2)(b) became dismissive and refused to provide it. PO McGuire described § 87(2)(b) tone and demeanor as "up and down" because he would oscillate between agitation and calmness. PO McGuire and PO Tierney thought that § 87(2)(b) might need to get evaluated because they considered the rectum incident to be an example of self-mutilation. The officers considered this as a sign that § 87(2)(b) could be a potential threat to himself. § 87(2)(b) did not make any explicit statements relating to harming himself or others. PO McGuire could not recall if he and PO Tierney whispered to each other about § 87(2)(b) being an EDP, but they both activate their BWCs around the same time. PO McGuire called for EMS. Approximately five to ten minutes later, Lt. Sansone and PO Gomez responded to the location. Lt. Sansone was called because the nature of the incident had changed, and he needed to know why. PO McGuire talked with Lt. Sansone outside and informed him of what happened. He stated that he did not think the incident was a rape case and informed him that he believed § 87(2)(b) was an EDP. PO McGuire did not mention if § 87(2)(b) was a threat to himself or others and was not asked this by Lt. Sansone. Lt. Sansone confirmed that he was fine with calling EMS. Once EMS arrived, Lt. Sansone and PO McGuire went into § 87(2)(b) apartment. PO McGuire informed § 87(2)(b) that he had an ambulance waiting for him. § 87(2)(b) screamed and told them to go away. PO McGuire asked § 87(2)(b) to stand up. PO McGuire put his hand on § 87(2)(b) elbow/forearm area to guide him up off the chair. PO McGuire did not yank him to get him out of the chair. PO Tierney grabbed § 87(2)(b) other arm. PO McGuire stood on § 87(2)(b) right while PO Tierney stood on his left. § 87(2)(b) stood up as the officers guided him up. However, immediately after he got up, § 87(2)(b) pulled away from PO McGuire and lunged towards PO Tierney causing them both to crash into the pedestal with the orb. The orb fell on the floor and shattered beneath them. PO McGuire denied pushing § 87(2)(b) into the PO Tierney. PO McGuire could not estimate the length of the glass but did not believe that the glass would be used by § 87(2)(b) as a weapon. PO McGuire immediately went to grab § 87(2)(b) around his hip to pull him off PO Tierney. PO McGuire pulled him away by lifting both arms up and falling backwards. § 87(2)(b) hip made contact with PO McGuire's face, specifically his nose, which caused him to bleed. PO McGuire pushed § 87(2)(b) off his face. § 87(2)(b) continued to resist the officers by flailing his arms. PO McGuire proceeded to strike § 87(2)(b) once on the right side of his face with a closed fist to gain compliance. PO McGuire could not recall how long § 87(2)(b) flailed before he struck him. § 87(2)(b) rolled over on his back after the strike to the face. The officers then placed handcuffs on § 87(2)(b). PO McGuire was taken to the hospital via another ambulance that same day and received treatment for his nose and back pain (BR 02).



PO Tierney's statement was generally consistent with PO McGuire's statement. PO Tierney assisted PO McGuire in handcuffing § 87(2)(b) by holding down one of his arms. The officers managed to place § 87(2)(b) in handcuffs within 20 seconds. PO Tierney did not witness PO McGuire administer any hand strikes to § 87(2)(b). Later that day, PO Tierney went to the hospital to get treatment for her knee (BR 03).

Lt. Sansone testified that though he initially heard about the call regarding the alleged rape earlier, he did not respond to the location until he received a later call from PO McGuire. PO McGuire informed him that § 87(2)(b) forcefully removed objects from his rectum. PO McGuire also informed him that § 87(2)(b) mentioned that he was used as a drug mule. Once he arrived on scene, PO McGuire explained to him again what he heard from § 87(2)(b). While the EMTs and the other officers went into § 87(2)(b) apartment to try and persuade him to get an evaluation, Lt. Sansone went further down the building hallway to speak with a neighbor in one of the other apartments to get more information on § 87(2)(b). Before he could talk to anyone, Lt. Sansone heard a crash inside of § 87(2)(b) apartment. Lt. Sansone went into the apartment and saw PO McGuire and § 87(2)(b) on the floor along with another officer. Lt. Sansone grabbed § 87(2)(b) legs to pin him down. The officers eventually placed § 87(2)(b) in handcuffs. Lt. Sansone called his supervisor, Captain Zuber, to inform him that two officers were injured. He could not recall if Capt. Zuber provided any instructions (BR 04).

TRI TINC § 87(2)(b) confirmed that a forcible takedown, a hand strike, and some wrestling/grappling were performed on § 87(2)(b) due to his resistance. § 87(2)(b) received lacerations that required stitches as a result of these actions (BR 05).

The BWCs show that when EMS entered § 87(2)(b) apartment, he refused to go with them. At the 16:22 mark of PO McGuire's BWC, PO McGuire grabs one of § 87(2)(b) arms. § 87(2)(b) runs away towards his pedestal and crashes into PO Tierney. It is unclear if he purposefully attempted to lunge into her. At 16:35, PO McGuire pulls § 87(2)(b) off PO Tierney though most of the action is unseen. At 16:44, PO McGuire strikes § 87(2)(b) on the right side of his face only a few seconds after pulling him off PO Tierney. The BWC shows that PO McGuire only struck § 87(2)(b) once. PO McGuire does not appear to make an attempt to grab § 87(2)(b) hands before the strike. The officers place § 87(2)(b) in handcuffs approximately one minute later (BR 06 – 13).

When appropriate and consistent with personal safety, members of the service will use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force. In situations in which this is not safe and/or appropriate, MOS will use only the reasonable force necessary to gain control or custody of a subject. NYPD Patrol Guide Procedure 221-01 (BR 14).

The BWC shows that PO McGuire grabbed § 87(2)(b) arm to get him to stand up after he refused to go with EMS. PO McGuire later pulls § 87(2)(b) off PO Tierney to get him off her and put him in handcuffs. Considering that § 87(2)(b) resisted the officers both verbally and physically, § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Though § 87(2)(b) alleged that PO McGuire pushed him into PO Tierney, it is clear from

the BWC that this did not occur and that § 87(2)(b) attempted to flee.

§ 87(2)(g)

Once PO McGuire pulled § 87(2)(b) off PO Tierney, the BWC shows that he immediately struck him once with a closed fist in the face. § 87(2)(b) had just crashed into glass and was bleeding from his face. PO McGuire testified that he did not believe that § 87(2)(b) would use the glass as a weapon. He stated that he struck § 87(2)(b) only to gain compliance since § 87(2)(b) kept flailing his body to resist. § 87(2)(g) there were several other officers already on scene and that § 87(2)(b) had just sustained a serious injury to his face, § 87(2)(g)

§ 87(2)(g)

**Allegation (D) Abuse of Authority: Police Officer Jennifer Tierney forcibly removed § 87(2)(b) to the hospital.**

**Allegation (E) Abuse of Authority: Police Officer Michael McGuire forcibly removed § 87(2)(b) to the hospital.**

**Allegation (F) Abuse of Authority: Lieutenant David Sansone forcibly removed § 87(2)(b) to the hospital.**

§ 87(2)(b) testified that once officers placed him in handcuffs, they brought him into an ambulance where he was taken to § 87(2)(b) to receive treatment for his injuries. § 87(2)(b) received stitches for the laceration on his face. After getting treatment for his injuries, the doctors brought him into a psychiatric ward against his will for a mental evaluation. § 87(2)(b) refused to provide the details of the evaluation. § 87(2)(b) denied ever making any threats to himself or others and was not under the influence of any narcotics or alcohol.

PO McGuire testified that he believed § 87(2)(b) was an EDP because of his “up and down” demeanor and because he previously put a finger in his rectum, a sensation that § 87(2)(b) described as akin to getting cut by razor blades. PO McGuire considered this act to be a form of self-mutilation. Because of this, he considered § 87(2)(b) to be a threat to himself. Both he and PO Tierney confirmed with each other that they believed he needed to go to the hospital. PO McGuire could not recall what they did to confirm with each other.

PO Tierney testified that she considered § 87(2)(b) to be an EDP because he stuck his finger up his rectum and had a history of being removed to the hospital. PO Tierney stated that though she never interacted with § 87(2)(b) prior to this incident, she recalled that he was no longer allowed within the 20<sup>th</sup> Precinct stationhouse because officers would always end up removing him to the hospital. PO Tierney remembered him from one of the past times that § 87(2)(b) visited the stationhouse and recognized him early in the conversation. She also considered him to be an EDP because his rape incident allegedly took place within a psychiatric ward. PO Tierney stated that she and PO McGuire gave each other a “look” to confirm that they both deemed § 87(2)(b) to be an EDP.

Lt. Sansone testified that once he arrived on scene, he spoke with PO McGuire to confirm the information that he had just revealed to him over the phone. Lt. Sansone at some point then spoke with a neighbor of § 87(2)(b) that he met outside. The neighbor informed Lt. Sansone that he knew § 87(2)(b) since 1991 and stated that § 87(2)(b) was known to start fights with people. Lt. Sansone stated that he considered § 87(2)(b) to be an EDP.

due to the totality of the information provided to him.

The BWCs confirm the testimony of the officers regarding § 87(2)(b) rape allegation. The BWCs also show that EMTs did not get a chance to speak with § 87(2)(b) before the officers attempted to place him into custody.

Officers can remove a person to the hospital if they appear to be emotionally or mentally disturbed and appear to be a threat or danger to themselves or others. NYPD Patrol Guide Procedure 221-13 (BR 15).

Though the BWCs confirm that § 87(2)(b) mentioned that he stuck his finger up his rectum, this occurred on a day much earlier than this incident. The testimony that the neighbor provided about § 87(2)(b) erratic behavior, and § 87(2)(b) removals to the hospital in the past, § 87(2)(g) None of the officers were able to articulate any specific threat § 87(2)(b) posed to himself or others either in the present or in the future. § 87(2)(g)

§ 87(2)(g)

**Allegation (G) Abuse of Authority: Lieutenant David Sansone searched § 87(2)(b) in Manhattan.**

At the 18:00 mark of Lt. Sansone's BWC, Lt. Sansone instructs officers to do a protective sweep of the apartment to ensure that there are no devices left on that could damage the building or any individuals left alone unattended. The officers enter the other rooms in the apartment but do not go into or open any smaller compartments or drawers.

In his interview, § 87(2)(b) did not mention any officers searching his apartment and could not have witnessed it since he had already been removed.

Lt. Sansone testified that at some point he instructed his officers to do a safety sweep of the apartment to check if there were any individuals left inside or if anything dangerous had been left on. Lt. Sansone stated that it is standard procedure to do a sweep of the area when an individual is removed to the hospital. Specifically, due to the nature of § 87(2)(b) delusional accusations, Lt. Sansone thought that there could be injured individuals inside of the apartment or devices left unattended.

Immediately following an arrest, officers may conduct a security check, a very quick and limited pass through the premises to check for third persons who may destroy evidence or pose a threat to the officers. People v. Green, 103 A.D.2d 362 (BR 16).

Under the "emergency doctrine," "(1) the police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for assistance for the protection of life or property, (2) the search must not be primarily motivated by intent to arrest and seize evidence, and (3) there must be some reasonable basis, approximating probable cause to associate the emergency with the area or place to be searched" to justify warrantless entry into a person's home. People v. DePaula, 179 A.D.2d 424 (BR 22).

Lt. Sansone admitted that he directed the officers to do a security sweep of the area to check for any individuals left unattended or anything left on that could damage the integrity of the building. However, the procedure for a security sweep only applies when an individual is arrested, not when they are removed to the hospital. Though Lt. Sansone mentioned § 87(2)(b) delusional

behavior as a specific reason to check the apartment, as previously noted, § 87(2)(b) never actually was a threat to himself or others during this incident. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

#### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 19).
- PO Tierney has been a member of service for 11 years and has been a subject in one previous CCRB complaint and one allegation, none of which were substantiated. § 87(2)(g)
- PO McGuire has been a member of service for eight years and has been a subject in two previous CCRB complaints and three allegations, of which one was substantiated:
  - Case number 202000872 involved a substantiated allegation of restricted breathing against PO McGuire. The Board recommended charges and the NYPD has not yet imposed discipline. § 87(2)(g)
- Lt. Sansone has been a member of service for 16 years and has been a subject in five previous CCRB complaints and 16 allegations, of which one was substantiated.
  - Case number 202000872 involved a substantiated allegation of discourteous action and discourteous word against Lt. Sansone. The Board recommended charges and the NYPD imposed a forfeiture of two vacation days. § 87(2)(g)

#### **Mediation, Civil, and Criminal Histories**

- Mediation was not offered for this complaint due to the COVID-19 mediation backlog at the time of the interview.
- As of March 18, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this incident (BR 20).
- § 87(2)(b)

Squad: 4

Investigator:	<u>Tyler Walls</u> Signature	<u>Inv. Tyler Walls</u> Print Title & Name	<u>07/08/2022</u> Date
---------------	---------------------------------	---	---------------------------

Squad Leader:	<u>Raquel Velasquez</u> Signature	<u>IM Raquel Velasquez</u> Print Title & Name	<u>07/08/2022</u> Date
---------------	--------------------------------------	--	---------------------------

Reviewer:	<u></u> Signature	<u></u> Print Title & Name	<u></u> Date
-----------	----------------------	-------------------------------	-----------------